

RESOLUTION NO. 1991-08

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, SUPPLEMENTING ORDINANCE NO. -08 OF THE CITY WHICH AUTHORIZED THE BORROWING OF NOT EXCEEDING \$135,000.00 TO FINANCE THE COST OF PURCHASING AND INSTALLING AN OUTDOOR EMERGENCY WARNING SYSTEM; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA:

ARTICLE I
AUTHORITY, DEFINITIONS AND FINDINGS

SECTION 1.01 AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 166, Parts I and II, Florida Statutes; the Charter Laws of the City of Winter Park, Florida; the Note Ordinance; and other applicable provisions of law; and is supplemental to the Note Ordinance.

SECTION 1.02 DEFINITIONS. Unless the context otherwise requires, the terms defined in this Section shall have the meanings specified in this Section. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

"Act" shall mean Chapter 166, Parts I and II, Florida Statutes; the Charter Laws of the City of Winter Park, Florida; the Note Ordinance; and other applicable provisions of law.

"Bond Counsel" shall mean any attorney at law or firm of attorneys of recognized standing in matters pertaining to the Federal tax exemption of interest on obligations issued by states and political subdivisions.

"City" or **"Issuer"** shall mean the City of Winter Park, Florida, a municipal corporation organized and existing under the laws of the State of Florida.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commission" shall mean the City Commission of the City of Winter Park, Florida.

"Default Rate" shall mean the highest rate of interest allowed by applicable law.

"Fiscal Year" shall mean the twelve month period commencing October 1 of each year and ending on the succeeding September 30, or such other twelve month period as the City may designate as its "Fiscal Year" as permitted by law.

"Loan" shall mean the term loan in the principal outstanding amount not to exceed One Hundred Thirty-Five Thousand and No/100 Dollars (\$135,000) to be made to the City by Rollins.

"Loan Agreement" shall mean the loan agreement between the City and Rollins containing the terms and conditions of the Loan.

"Note" shall mean the Unsecured Term Note, 2008, herein authorized to be issued in the aggregate principal amount not to exceed \$135,000.

"Note Holder" shall mean Rollins as the holder of the Note and any subsequent registered holder of the Note.

"Note Ordinance" shall mean Ordinance No. _____-08 of the City.

"Note Rate" shall mean a rate of interest equal to zero.

"Note Registrar" shall mean the City Clerk of the City, who shall maintain the registration books of the City and be responsible for the transfer of the Note.

"Note Resolution" shall mean this Resolution.

"Project" shall mean the purchase of and installation of an emergency outdoor warning system.

"Rollins" shall mean Rollins College, a Florida not for profit corporation.

SECTION 1.03 FINDINGS. It is hereby ascertained, determined and declared that:

A. The City has determined in accordance with the Note Ordinance that it is in its best interest to finance the Project.

B. Prior to adoption of this Note Resolution, based upon all available information and advice from the staff of the City, the Commission has determined due to the nature of the proposed borrowing that a public sale is not feasible under the present municipal bond market and the non-interest bearing feature of the Note.

C. A negotiated sale of the Note will result in the most favorable financing plan and is in the best interest of the City.

D. The Note will not be a "private activity bond" as defined in Section 141 of the Code.

E. For purposes of determining rebate requirements under Section 148(f) of the Code, the City anticipates that it will spend the proceeds of this borrowing, and each draw or advance thereof, within sixty (60) days of the receipt thereof.

SECTION 1.04 RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Note by the Note Holder, this Note Resolution (including the Note Ordinance) shall be deemed to be and shall constitute a contract between the City and the Note Holder.

ARTICLE II

AUTHORIZATION OF BORROWING AND ISSUANCE OF NOTE; DESCRIPTION, DETAILS AND FORM OF NOTE

SECTION 2.01 AUTHORIZATION OF BORROWING. The establishment of a \$135,000 unsecured term loan to be used for the financing of the Project has been authorized by the Note Ordinance. The cost of such borrowing and establishment of the term loan may include, but need not be limited to, legal and financing expenses; fees of consultants; administrative expenses; such other costs and expenses as may be necessary or incidental to the borrowing herein authorized, which costs shall be paid by the City from other legally available funds and not from the proceeds of any loan draw or advance.

SECTION 2.02 AUTHORIZATION OF NOTE. Subject to the provisions of this Note Resolution, the Note Ordinance has authorized the issuance of an obligation of the City to be known as "the City of Winter Park Unsecured Term Note, 2008," herein sometimes referred to as "Note", in the aggregate outstanding principal amount not to exceed \$135,000.

SECTION 2.03 DESCRIPTION OF NOTE. The Note shall be dated the date of its delivery; shall bear interest at the Note Rate; shall be payable in accordance with the provisions of the Loan Agreement to be executed at the time of delivery of the Note, and shall mature and be due and payable, if not sooner paid, no later than three (3) years from the date of its execution and delivery.

The Note shall be issued in fully registered form; shall be payable with respect to principal in lawful money of the United States of America, by mail to the Note Holder at its address as it appears on the registration books. Upon final payment of principal at maturity, the Note shall be surrendered to the City.

SECTION 2.04 EXECUTION OF NOTE AND LOAN AGREEMENT. The Note and Loan Agreement shall be executed in the name of the City by its Mayor or Vice Mayor (the "Mayor"), and the corporate seal of the City or a facsimile thereof shall be affixed thereto or reproduced thereon and attested by its City Clerk or Assistant City Clerk (the "Clerk"). The authorized signatures for the Mayor and City Clerk shall be manual. The Certificate of Authentication of the Note Registrar shall appear on the Note, and the Note shall not be valid or obligatory for any purpose or be entitled to any benefit under this Note Resolution unless such certificate shall have been duly executed on such Note. The authorized signature for the Note Registrar shall be manual. In case any one or more of the officers who shall have signed or sealed the Note shall cease to be such officer of the City before the Note so signed and sealed shall have been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Note shall hold the proper office, although at the date of such Note such person may not have held such office or may not have been so authorized.

SECTION 2.05 NEGOTIABILITY. Except as provided below, the Note shall be and have all the qualities and incidents of a negotiable instrument under the laws of the State of Florida, and each successive Note Holder, in accepting the Note, shall be conclusively deemed to have agreed that such Note shall be and have all of the qualities and incidents of a negotiable instrument (except as provided below) under the laws of the State of Florida.

SECTION 2.06 REGISTRATION. The Note Registrar shall be responsible for maintaining the books for the registration and transfer of the Note.

When the Note is presented for transfer, redemption or payment (if so required by the City or the Note Registrar), it shall be accompanied by a written instrument or instruments of transfer, in form and with guaranty of signature satisfactory to the City or the Note Registrar, duly executed by the Note Holder or by his duly authorized attorney.

The City and the Note Registrar may treat the Note Holder of the Note as the absolute owner thereof for all purposes, whether or not such Note shall be overdue, and shall not be bound by any notice to the contrary.

SECTION 2.07 PREPAYMENT. The City, at the option of the City, may prepay the Note in whole or in part, at any time or from time to time without penalty or premium, by paying to the Note Holder all or part of the principal amount of the Note. Each prepayment shall be made on such date and in such principal amount as shall be specified by the City in a written notice delivered to the Note Holder not more than fifteen (15) days and not less than five (5) days prior to the specified prepayment date. Notice having been given as aforesaid, the principal amount stated in such notice or the whole thereof, as the case may be, shall become due and payable on the prepayment date stated in such notice.

SECTION 2.08 FORM OF NOTE AND LOAN AGREEMENT. The text of the Note and the Loan Agreement shall be substantially in accordance with the form of the Note and Loan Agreement attached to this Note Resolution as Exhibits "A" and "B", respectively, with such omissions, insertions and variations as may be necessary or desirable and authorized or permitted by this Note Resolution or any subsequent resolution adopted prior to the issuance thereof; or as may be necessary to comply with applicable laws, rules and regulations of the United States Government and the State of Florida in effect upon the issuance thereof.

SECTION 2.09 PAYMENT OF NOTE. The Loan, as evidenced by the Note, shall be payable from moneys budgeted and appropriated pursuant to the Loan Agreement and other legally available funds of the City, all in the manner and to the extent provided in the Loan Agreement. The Loan and the Note shall not constitute a general debt, liability or obligation of the City or of the State

of Florida or any political subdivision thereof within the meaning of any constitutional, statutory or charter provision. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Loan, as evidenced by the Note, and the Note Holder shall never have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment. The Note shall not constitute a lien upon any property of the City.

**ARTICLE III
APPLICATION OF NOTE PROCEEDS**

SECTION 3.01 APPLICATION OF NOTE PROCEEDS. The proceeds received from the delivery of the Note shall be applied by the City for the cost of financing the Project by the City.

**ARTICLE IV
EVENTS OF DEFAULT; REMEDIES; TAX COVENANTS**

SECTION 4.01 EVENTS OF DEFAULT. Each of the following is hereby declared an "Event of Default":

(a) Payment of the principal of the Note shall not be made within ten (10) days after a scheduled amortization payment or on the maturity date or after the same shall otherwise become due and payable; or

(b) The City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Note or in this Note Resolution or in the Loan Agreement on the part of the City to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the City by the Note Holder; provided, however, that if, in the reasonable judgment of the Note Holder, the City shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the City to diligently complete such curative action; or

(c) Any representation or warranty of the City contained in this Note Resolution or in any certificate or closing document executed and delivered by the City in connection with the closing of the Loan or the Note shall prove to have been untrue in any manner respect when executed and delivered; or

(d) Any proceedings are instituted with the consent or acquiescence of the City, for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted; or

(e) The City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the Federal Bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(f) The City is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the City, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

(g) If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole of its property and such custody or control shall not be terminated within ninety (90) days from the date of assumption of such custody or control.

SECTION 4.02 REMEDIES. Upon the occurrence and during the continuance of an Event of Default, the Note Holder may, by a notice in writing to the City, declare the principal of the Note (if not then due and payable) to be immediately due and payable, and upon such declaration, the same shall be immediately due and payable. Upon the occurrence and during the continuance of an Event of Default, the Note Holder may by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights existing under the laws of the State of Florida, or granted and contained herein, and may enforce and compel the performance of all duties herein required or by any applicable statutes to be performed by the City or by any officers thereof. Upon the occurrence and during the continuance of an Event of Default, the Note shall bear interest at the Default Rate and the right of the City to demand, request

or receive advances, draws or disbursements under the Loan shall terminate. Nothing herein, however, shall be construed to grant to the Note Holder any lien on any property of or within the corporate boundaries of the City.

SECTION 4.03 NEGOTIATED SALE OF NOTE. The Note is hereby awarded and sold to Rollins as provided in the Loan Agreement.

SECTION 4.04 NECESSARY ACTION. The Mayor, the City Clerk and the other officers of the City are hereby designated agents of the City in connection with the issuance of the Note, and are authorized and empowered, individually or collectively, to take all action and steps and to execute and deliver any and all instruments, documents or contracts on behalf of the City which are required by this Note Resolution and/or are necessary and desirable in connection with the execution and delivery of the Note, and which are not inconsistent with this Note Resolution and any other action relating to the Note.

**ARTICLE V
MISCELLANEOUS PROVISIONS**

SECTION 5.01 ADDITIONAL COVENANTS. As long as Rollins is the Holder of the Note, the City shall:

(a) Deliver to Rollins by January 31 of each year, a copy of the annual audit of the financial statements of the City for the previous Fiscal Year;

(b) Deliver to Rollins a copy of its balanced budget prior to the beginning of each Fiscal Year;

(c) Deliver to Rollins within 30 days of its approval by the Commission, a copy of the annual budget of the City for the succeeding Fiscal Year.

(d) Inform Rollins of all actual or potential contingent liabilities, not otherwise disclosed in the annual audit or budget of the City, that could materially adversely affect the ability of the City to pay the principal of or interest on the Note.

(e) Maintain a minimum cash flow to debt service of not less than 1.0 to 1.0.

A Certificate of Compliance signed by the Mayor or the City Clerk or other responsible officer of the City, including the computation of all restrictive covenants contained in this Note Resolution and the Loan Agreement, shall accompany all financial statements required to be provided under this Section 5.01.

SECTION 5.02 MODIFICATION OR AMENDMENT. No modification or amendment of this Note Resolution or of any ordinance or resolution amendatory hereof or supplemental hereto may be made without the consent in writing of the Note Holder.

SECTION 5.03 SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Note issued hereunder.

SECTION 5.04 REPEAL OF INCONSISTENT PROVISIONS. All resolutions or parts thereof in conflict with this Note Resolution are hereby repealed to the extent of such conflict.

SECTION 5.05 EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage.

ADOPTED after reading by title at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, Florida, on this 28th day of April, 2008.

CITY OF WINTER PARK, FLORIDA

By: Margie L. Bridges
Vice Mayor Margie Bridges

ATTEST:

Cynthia S. Bonham
Cynthia S. Bonham, City Clerk